IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 47 OF 2006

Shri Uday P. Desai,
Married, major in age,
Businessman, residing at
C/o Mineira de Rapila
Dessai Nigadikar Minerals Pvt. Ltd.
Behind Pandawas Chapel,
Aquem, Margao,
Salcete, Goa. ..... Appellant

V e r s u s

1. Shri Sunil Ramu Gurav,
married, major in age,
residing at Near Ravalnath Temple,
Ponda, Goa.

2.The State of Goa,
represented by Public
Prosecutor. ..... Respondents

Mr. Arun Bras De Sa, Advocate for the Appellant.

Mr. R. G. Ramani, Advocate for Respondent no.1.

CORAM: N. A. BRITTO, J.

DATE: 30th November, 2006.

ORAL JUDGMENT

Heard learned Counsel on behalf of the parties.

2. The petitioner herein is an accused. This revision is filed by him against the Order dated 30.11.2005 of the learned Sessions Judge, who has upheld the conviction and sentence imposed upon the accused under Section 138 of the Negotiable Instruments Act, 1881. The accused has been sentenced to undergo two months SI and to pay a compensation of Rs.60,000/- and in default to undergo additional simple imprisonment for one month.

3. The only issue raised is as regards limitation which has been dealt with by both the Courts below. There is no dispute that initially the Complainant had deposited a sum of Rs.30,000/- on 20.03.1995 for purchase of a tipper truck. Since the accused was unable to deliver the said truck and also refund the said sum of Rs.30,000/-, the accused admitted in writing his liability to pay to the Complainant a sum of Rs.30,000/- on 13.06.1997. Another acknowledgment in writing was given on 30.05.1998 and yet again, another acknowledgment in writing on 25.07.2000. The subject cheque in the sum of Rs.53,706/- was then issued on 31.12.2001. In other words, the aforesaid facts show that the accused had admitted his liability in writing from time to time and therefore it could not be said that

the subject cheque dated 31.12.2001 for Rs.53,706/- was issued in payment of a time barred debt. There is no merit in the contention raised on behalf of the accused that the cheque was given in payment of a time barred debt. The decision of this Court in ***Narendra V. Kanekar v. Bardez-Taluka Co-operative Housing Mortgage Society Ltd. (2006 (2) Goa L. R. 13)***, will have no application to the facts of the case. The revision filed by the accused has, therefore, no substance and is liable to be dismissed.

4. On behalf of the accused, it is stated that a sum of Rs.37,000/- was due to be paid to the Complainant at the time of filing this revision, the balance amount having already been paid. On behalf of the Complainant, it is stated that in case the accused pays an amount of Rs.20,000/-, the Complainant is prepared to compound the offence. Parties agree that in case the accused pays the balance amount of Rs.20,000/- within a period of 45 days from today, the Complainant will not require the accused to undergo the sentence imposed by the learned J.M.F.C. In the light of that, the accused is required to pay to the Complainant the said sum of Rs.20,000/- within a period of 45 days. It is made clear that no extension would be granted. On the failure of the accused to pay the said sum of Rs.20,000/- within the stipulated time, the learned Magistrate will be at

liberty to execute the sentence imposed. In case the payment is made, the offence shall stand compounded and the accused acquitted.

5. With the above observations, the revision petition shall stand dismissed.

N. A. BRITTO, J.

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